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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 RICHARD BANDA,

12 Petitioner,

13 v.

14 HIGH DESERT STATE PRISON, et al.,

15 Respondent.
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Case No. 2:19-cv-00989-KJD-VCF

ORDER

17 Petitioner has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C.
18 § 2254, an application to proceed in forma pauperis (ECF No. 1), and a motion for appointment
19 of counsel (ECF No. 2).

20 Petitioner is financially eligible for appointment of counsel under 18 U.S.C. § 3006A.
21 The court finds that appointment of counsel is in the interests of justice given petitioner's lengthy
22 prison sentence. The court will appoint the Federal Public Defender provisionally. If the Federal
23 Public Defender can represent petitioner, then counsel should note two things. First, the amended
24 petition, if any, will need to name the correct respondent. Second, petitioner's state post-
25 conviction proceedings might not be complete. Petitioner has filed an appeal in post-conviction
26 proceedings with the Nevada Supreme Court. Banda v. State, No. 78752.¹ However, petitioner
27 appears to be appealing a district-court order that denied his request for an evidentiary hearing,

28 ¹ <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=55404> (report generated July 2, 2019).

1 not a final order disposing of his post-conviction habeas corpus petition. If that is true, then the
2 post-conviction petition still is pending in the state district court.

3 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF
4 No. 1) is **GRANTED**.

5 IT FURTHER IS ORDERED that the clerk file the petition for a writ of habeas corpus
6 pursuant to 28 U.S.C. § 2254.

7 IT FURTHER IS ORDERED that the motion for appointment of counsel (ECF No. 2) is
8 **GRANTED**.

9 IT FURTHER IS ORDERED that the Federal Public Defender is appointed provisionally
10 a counsel. The Federal Public Defender will have thirty (30) days from the date of entry of this
11 order either to undertake representation of petitioner or to indicate to the court the office's
12 inability to represent petitioner. If the Federal Public Defender is unable to represent petitioner,
13 then the court will appoint alternate counsel, subject again to establishment of financial eligibility.
14 The court will set a deadline for filing of an amended petition or a motion seeking other relief
15 after counsel has appeared. The court anticipates setting the deadline for sixty (60) days from
16 entry of the formal order of appointment. The court does not signify any implied finding of
17 tolling during any time period established or any extension granted. Petitioner always remains
18 responsible for calculating the limitation period of 28 U.S.C. § 2244(d)(1) and timely presenting
19 claims. The court makes no representation that the petition, any amendments to the petition, and
20 any claims in the petition or amendments are not subject to dismissal as untimely. See Sossa v.
21 Diaz, 729 F.3d 1225, 1235 (9th Cir. 2013).


22 IT FURTHER IS ORDERED that the clerk add Aaron Ford, Attorney General for the
23 State of Nevada, as counsel for respondents.

24 IT FURTHER IS ORDERED that the clerk electronically serve both the Attorney General
25 of the State of Nevada and the Federal Public Defender a copy of the petition and a copy of this
26 order.

1 IT FURTHER IS ORDERED that respondents' counsel must enter a notice of appearance
2 within twenty-one (21) days of entry of this order, but no further response will be required from
3 respondents until further order of the court.

4 IT FURTHER IS ORDERED that the clerk shall provide copies of all prior filings to both
5 the Attorney General and the Federal Public Defender in a manner consistent with the clerk's
6 current practice, such as regeneration of notices of electronic filing.

7 DATED: 7/3/2019

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9 KENT J. DAWSON
United States District Judge